IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 155 OF 2007

IN

NOTICE OF MOTION NO. 4411 OF 2001

IN

L.C. SUIT NO. 2609 OF 2001

WITH

CIVIL APPLICATION 228 OF 2007

Capt. D.V. Kopilkar & Ors. .... Appellants
Vs.
Municipal Corporation of Gr. Bombay ..... Respondents

Mr. Anil Kumar i/b Mr. Dhanesh R. Shah for the Appellants.

Ms. Geeta Joglekar for Respondents

CORAM : SHRI. A.M. KHANWILKAR, J.,
DATE : 2ND MARCH, 2007

P.C.

1) Heard counsel for the parties. I see no reason to depart from the conclusion reached by court below in dismissing the notice of motion. The Court below has rightly noted that the application for regularisation in respect of the suit premises preferred by the appellants has been rejected by the Corporation for non compliance of

certain conditions. That fact has been restated before this Court by the counsel for the Corporation on instructions. The argument of the appellants that said finding is error apparent on the face of the record is untenable. Indeed, in the written statement filed by the Corporation, in Para 4(e), it is mentioned that the proposal submitted by the appellants was under consideration and the same will be considered on merits on receipt of N.O.C. of MHADA. However, the argument overlooks that the written statement was filed on 13th December 2005. The application for regularisation was made in 2003. As the appellants failed to pay validation charges before expiry of two years, the application was deemed to be rejected. This is not stated in so many words in the written statement. Obviously, there was no occasion for the Corporation to state that position in the written statement which came to be filed in 2005.

2) As the application for regularisation of the suit premises made by the appellants-plaintiff stands rejected, it necessarily follows that the suit premises is un-authorised and as no evidence is forthcoming that the premises are protected premises, the Corporation will have no option but

to proceed with the action under 351 of the Act.

3) At this stage, counsel for the appellants submits that the appellants will be given one opportunity to pursue their request for regularisation of the suit premises. By way of indulgence, the appellants are granted four weeks time from today to apply to the competent authority Executive Engineer, Building Proposal Department, Eastern Suburb and comply with all the necessary formalities to enable the competent authority to process the proposal without any further delay. The competent authority shall take necessary decision in accordance with law on the said proposal within four weeks from its receipt. The entire exercise will have to be completed within ten weeks from today. Till such time, the Corporation shall not precipitate the matter in respect of the suit premises. It is made clear that the competent authority will decide the issue of regularisation on its own merit.

4) It is made clear that if the appellants-plaintiffs fail to make proper and valid application within four weeks from today, the Officers of the Corporation will be free to proceed

against them. The appellants should give intimation of institution of the application/ proposal for regularisation of the suit premises to the Legal Department of the Corporation simultaneously.

5) Appeal and Civil Application disposed of on the above terms.

(A.M. KHANWILKAR, J.)